IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:19.02. 2007

CORAM:

THE HONOURABLE MR. JUSTICE V. DHANAPALAN

W.P. No.17952 of 2004

1. S. Murugan @ Sakkarai Poosari
2. S. Dharmalingam Poosari .. Petitioners

vs.

1. The Joint Commissioner
   Hindu Religious & Charitable Endowment Board
   Sivagangai

2. The Assistant Commissioner/Executive Officer
   Mariamman Temple
   Irukkankudi Village
   Sattur Taluk
   Virudunagar District

3. S.A. Rajendran Poosari .. Respondents
   (impleaded vide order of this Court
   dated 21.01.2006)

Writ Petition filed under Article 226 of the Constitution of India praying for a writ of Mandamus as stated therein.

For petitioners Mr. S. Subbiah

For respondents Mr. M.R. Murugesan, G.A. for R!
Mr. M. Sriram for R2
Mr. R. Shanmughasundaram
Senior Counsel
for Mr. S.D. Ramalingam for R3

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O R D E R

Two of the hereditary poojaris of Arulmigu Mariamman Thirukoil, Irukkankudi Village, Sattur Taluk, Virudhunagar District have filed this writ petition praying for a writ of mandamus directing the respondents to implement the scheme dated 04.05.1935 for payment of their share from and out of the income of the temple at 2/26 share as per the admission of the respondents themselves with interest at

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the rate of 9% per annum from the date of default till the date of actual payment and to continue the payment of the share of the petitioners as per the said scheme.

2. According to the petitioners, Arulmigu Mariamman Thirukoil, Sattur Taluk, Virudhunagar District (in short "the temple") is one of the famous public temples drawing a large income and coming under the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (in short "the Act"). In respect of the affairs of the temple, there had been a scheme framed by the then Board of the temple under the earlier Act and as per the said scheme, the Poojaris are entitled to a share in the income of the temple and the father of the petitioners were recognised as hereditary poojaris-cum-trustees of the temple and as such, the petitioners are also entitled to a share of 2/30 and now, a share of 2/26 from and out of the income of the temple; their names are also found in the scheme dated 04.05.1935 and also the standing order no. 1908 dated 11.04.1940 of the then Hindu Religious and Charitable Endowment Board.

3. It is the further case of the petitioners that the administration of the temple had been taken over by the second respondent i.e. the Assistant Commissioner / Executive Officer of the temple and the petitioners were paid their share of income upto the year 1995 and as such, they they are entitled to their share of 2/26 from the income of the temple and there is no justification on the part of the respondent in withholding the payment payable to them; on account of mis-leading statements by third parties, the respondents, all of a sudden, have deliberately started withholding the payment which is legitimately payable to them; in this regard, a legal notice was issued by the petitioners on 11.06.1999 and a reply was sent by the respondents on 25.06.1999 and a rejoinder was sent by the petitioners on 14.07.1999.

4. Aggrieved by the non-payment of their share, the petitioners have filed a suit in O.S. No.31 of 2000 on the file of the Sub-Judge, Sivakasi, seeking declaration that they are entitled to 2/26 share of the income of the temple as per the Board Order No.1908 dated 11.04.1940 and the letter dated 30.05.1996 and for the payment of their share in the form of mandatory injunction. The Sub-Judge, in his judgment dated 20.06.2003 disposed of the suit with the directions that the petitioners should move an application before the first respondent, the Joint Commissioner, H.R. & C.E. Board, Sivagangai and the first respondent thereafter, should fix the income within a period of three months from the date of filing of the above application. In the said judgment, liberty was given to the respondents to work out the share of the petitioners.

5. Accordingly, the petitioners filed an application before the first respondent on 13.08.2003 and the same was received by the

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first respondent on 18.08.2003 and since it was not duly considered by the first respondent, the petitioners filed a petition for contempt of court in I.A. No.538 of 2003 on the file of the Sub-Judge, Sivakasi and on account of the enhancement of the pecuniary jurisdiction of the Civil Courts, the above I.A. was transferred to the District Munsiff Court at Sattur and the same has been re-numbered as I.A. No.76 of 2004 which is still pending. According to the petitioners, the suit is not pending before the Sub-Court and the same had already been disposed of by a judgment dated 20.06.2003 and what was pending was only an application for contempt of court in not obeying the decree dated 20.06.2003 passed by the Sub-Judge, Sivakasi. After the receipt of application for contempt of court, the respondents have preferred an appeal to the District Judge, Virudhunagar at Srivilliputhur, but along with an application in I.A. No.334 of 2003 and the same is pending.

6. It is the specific case of the petitioners that their right to claim their share as hereditary poojaris as per the scheme cannot be denied and what the respondents contended before the Sub-Judge was that the suit is not maintainable in view of the bar under Section 108 of the Act and that O.A. No.4 of 2000 filed by the hereditary trustees for the modification of the scheme which is filed after the suit of the petitioners is pending. The petitioners' case is that even assuming that the suit filed by them is not maintainable in view of the bar under Section 108 of the Act, their right of share in the income of the temple cannot be deprived of just because O.A. No.4 of 2000 filed by the hereditary trustees is pending, to which they are not parties and hence, the respondents are liable to pay them, their share from and out of income of the temple even without the decree and judgment dated 20.06.2003, by implementing the scheme framed on 04.05.1935, since the same was paid by the respondents till 1995, and if at all had there been any dispute, the respondents ought to have initiated proceedings for determination of the share of the petitioners rather than abruptly stopping payments to the petitioners.

7. Finally, it is the case of the petitioners that the mandamus sought in this writ petition is not hit under the decree dated 20.06.2003 passed by the Sub-Judge, Sivakasi and as they were paid a sum of Rs.30,000/- each per annum till 1995, they are entitled not only to the past arrears but also future payment of the same without prejudice to their right to receive the actual share of the temple income.

8. The Assistant Commissioner/Executive Officer of the temple, the second respondent herein, has filed counter and it is his case that the temple is an ancient one, notified in the H.R. & C.E. Act, 1927 and under Sections 18 and 63 of the Madras Act 2 of 1927, a scheme was framed on 04.05.1935 and thereafter, as per the orders of the Deputy Commissioner, Thanjavur in C.A. No.9 of 1955, orders were passed and amendments were made to the scheme and an

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Executive Officer was appointed to look after the entire administration of the temple and since the scheme is an old one, there exists some inconsistency while implementing the same as certain provisions of the scheme are against the present amendment to the Act and in view of this position, the first respondent deemed it necessary to modify the scheme in order to make it workable to the prevalent circumstances. By that time, the petitioners filed O.S. No.31/2000 praying for a declaration that they are entitled to 2/30 share from the income of the temple as per Board's order no.1908 and in consequence, to direct the second respondent to pay the petitioners their due share and the second respondent herein filed a written statement in the suit denying the liability and also bringing out to the notice of the Sub Court that to decide various aspects of the scheme, the first respondent has initiated action by filing O.A. No.4 of 2000 and the same is pending for modification of the earlier scheme. The Sub-Court while deciding the matter, has taken into account the pendency of the O.A. and directed the petitioners to seek appropriate relief before the Enquiry Officer i.e. the first respondent herein.

9. According to the second respondent, since the first respondent is the competent authority to decide the issue, it has to be agitated before the first respondent and this respondent had nowhere admitted the share of the petitioners as claimed by them and had also not admitted the number of persons claiming to be the poojaris in respect of the temple. As per the scheme as well as the Act, it is the first respondent who has to ascertain the number of persons claiming the share, income from various sources and entitlement of the share in respect of each poojari and this respondent has no authority to ascertain the share and to fix the income of the petitioners.

10. It is the further case of the second respondent that the petitioners are two poojaris among 28 poojaris and without impleading 26 other poojaris, the claim of share made by the petitioners is not at all maintainable for non-joinder of parties and the writ petition has to be dismissed on that ground. Also, according to the second respondent, as per Section 63 of the Act, it is the first respondent who is the competent authority to hold necessary enquiry in respect of entitlement of any person with regard to income from any religious institution and insofar as the petitioners are concerned, they are entitled to 2 ½ days each in every three months period and the share of income of each poojary will devolve on the number of days allotted to him and thus, the petitioners are entitled to 10 days each and were paid approximately an amount of Rs.6,000/- per year. This was received by them upto 15.11.1997 without any demur and as a matter of fact, the petitioners were also paid a sum of Rs.30,000/- as advance by the second respondent which is to be adjusted from the future amount to which they are entitled to. According to the second respondent, after 15.11.1997, the petitioners did not claim their

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share and consequently, the same was not paid. In the meanwhile, the first respondent has initiated proceedings to modify the scheme in the year 2000 and those poojaris who are claiming the amounts are being paid their respective shares and insofar as the petitioners are concerned, they wanted heavy enhancement in the share which could not be acceded to and hence, on their own accord, they have not insisted for any payment; however, their case is under consideration before the first respondent who is the competent authority to decide. Therefore, the claim of the petitioners in this writ petition is premature and accordingly, the writ petition is liable to be dismissed.

11. The third respondent who is the Managing Hereditary Trustee of the temple has been impleaded as the third respondent in this writ petition by an order dated 21.01.2006 made by this Court and he has filed his counter.

12. According to him, the eldest male member of the hereditary trustee/poosari family can continue as hereditary trustee and as such, there are totally eleven trustees; the Commissioner for H.R. & C.E. Board, Madras has passed an order dated 11.04.1940 wherein the emoluments of Hereditary Trustees have been clearly stated as 1/3 of the offerings and not 2/26 as claimed by the petitioners.

13. The further case of the third respondent is that his forefather Ramaswamy, who was a Hereditary Trustee-cum-Poojari, was the only person to get his 1/3 share as per the Board order dated 11.04.1940 and after his demise, his three sons became Hereditary Trustees/Poojaris and they have got descendants in their respective families and as such, there is no individual hereditary poosari and only the eleven hereditary trustees have the right to perform poojas and they get their chance in rotation and in case of appointment of poojaris, Section 55(2) of the Act has to be followed which says that no person shall be entitled to appointment to any vacancy referred to in sub-section (1) merely on the ground that he is next in the line of succession to the last holder of the office.

14. The third respondent has stated that the claim of the petitioners that they are entitled to 2/30 and now 2/26 share is an invented one and the 1/3 share is divided among the three families with respect to number of descendants in their respective families which is evident from the accounts maintained in the temple. It is also the case of the third respondent that the petitioners are entitled to get only their father's share and their father's brother's share which they are attempting to claim cannot be recognized as legal by way of this writ petition and further, since the petitioners have filed a suit in O.S. No.31 of 2000 for the same relief and that too without making any of the trustees as parties, this writ petition is not maintainable and that apart, as

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per Section 63 (e) of the Act, it is only the Joint Commissioner, the first respondent who can decide the question on hand.

15. It is also the specific case of the third respondent that aggrieved by the order in O.S. No.31 of 2000 in which the petitioners were asked to move an application before the second respondent to fix their exact share of income, the petitioners had preferred an appeal in A.S. No.66 of 2004 and the same is pending and suppressing this fact, this writ petition has been filed by the petitioners and hence, on this ground too, it is liable to be dismissed.

16. Heard Mr. S. Subbiah, learned counsel for the petitioners, Mr. R. Shanmugasundaram, learned Senior Counsel appearing for Mr. S.D. Ramalingam, learned counsel for the third respondent and Mr. M. Sriram, learned counsel for the second respondent and Mr. M.R. Murugesan, learned Government Advocate for the first respondent.

17. Mr. Subbiah, learned counsel for the petitioners has contended that as per the scheme decree dated 04.05.1935, the petitioners are entitled to the benefits and even assuming that the suit is not maintainable in view of Section 108 of the Act, since the petitioners are not parties to O.A. No.4 of 2000 which is pending before the Joint Commissioner in which they ought to have been impleaded as parties, the petitioners have to necessarily ignore any proceedings, if initiated without impleading them as parties and mere pendency of the O.A. filed by someone for the modification of the scheme cannot have any relevance relating to payment of the petitioners' share and therefore, the respondents are bound to pay the petitioners' share from and out of the income of the temple even without the decree and judgment dated 20.06.2003 as there is a scheme decree framed on 04.05.1935 which continues to be in force.

18. The counsel for the petitioners has further contended that the petitioners were paid their share till 1995 and when there is no dispute or rival claim relating to the share of the petitioners, the respondents cannot dispute the right of the petitioners to claim their due share. He has further argued that the prayer now sought by the petitioners in the present writ petition is not hit under decree dated 20.06.2003 passed by the Sub-Court, Sivakasi and the right claimed by the petitioners will not be excluded even assuming that the Civil Court has no jurisdiction in the event of appeal being allowed. It is his strong contention that since the respondents have arbitrarily and unilaterally stopped the payments due to the petitioners abruptly without any justification the petitioners, being left with no other alternative remedy, have invoked the jurisdiction of this Court under Article 226 of the Constitution of India.

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19. On the other hand, Mr. R. Shanmugasundaram, learned Senior Counsel who is appearing on the side of the third respondent, in his submissions, has strenuously contended that the scheme decree dated 04.05.1935 is in force and there is no individual hereditary poojari and only 11 Hereditary Trustees have the right to perform the poojas and they get their chance in rotation and any legal heir under them can perform the poojas only after getting due permission from the respective Hereditary Trustee/Poojari and even in case of appointment of any Archakas or Poojaris, Section 55(2) of the Act has to be followed and no person shall be entitled to appointment to any vacancy referred to under sub-section (1) merely on the ground that he is next in the line of the succession to the last holder of office.

20. The learned Senior Counsel has further put forward his plea that in any event, the writ petition is not maintainable as the petitioners had filed a suit for the same relief and even as per Section 63(e) of the Act, only the Joint Commissioner or Deputy Commissioner of the H.R. & C.E. Board can decide the dispute such as the one on hand. It is his further contention that even after the order of the Joint Commissioner in O.A. No.4 of 2000 under Section 63(e) of the Act, the petitioners, as per Section 70(1) of the Act, may institute a suit and if aggrieved by the decree of the said suit, as per Section 70(2) of the Act, may approach this Court by way of an appeal and in short, they cannot move this Court without exhausting completely the remedy available to them before moving this Court and in that view of the matter as well, this writ petition is not at all maintainable.

21. Mr. M. Sriram, learned counsel for the second respondent has contended that the temple is notified in H.R. & C.E. Act and under Sections 18 and 63 of the Madras Act, 2 of 1927, a scheme was framed on 04.05.1935 and thereafter, as per the orders of the Deputy Commissioner, Thanjavur, an Executive Officer was appointed and the scheme being a very old one and the consequent inconsistency in the process of implementation of the scheme, the first respondent, with a view to modify the scheme as a workable one to suit the prevalent circumstances, has initiated action in O.A. No.4 of 2000 and the same is pending for modification of the earlier scheme and in such a situation, the claim raised by the petitioners cannot be entertained at this stage as the Joint Commissioner is the appropriate and competent authority to take a decision in this regard. The counsel for the second respondent has objected to the contention raised by the counsel for the petitioners that the respondents have abruptly stopped making payment to the petitioners. In this regard, it is his submission that the petitioners were demanding a huge enhancement and hence, they were not inclined to claim anything and as such, payment was not made by the second respondent and in that view of the matter, it is not right on the part of the counsel for the petitioners to argue that the second respondent has abruptly stopped making

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payment to the petitioners. Mr. Sriram has further argued that by their conduct, the petitioners, admitting the decree in the O.S., have presented an application before the first respondent, to consider their claim and in view of the pendency of the same, the writ petition is not sustainable.

22. Mr. M.R. Murugesan, Government Advocate appearing for the first respondent, on instruction, has submitted that as per Section 63(e) of the Act, the Joint Commissioner is the competent authority to hold necessary enquiry in respect of entitlement of any person with regard to the income from any religious institution and therefore, when an application is pending before the first respondent, this writ petition is a premature one and accordingly, not maintainable.

23. I have carefully considered the rival submissions made by the counsel on either side and have perused all the documents available before this Court.

24. It is an admitted fact that the scheme decree framed on 04.05.1935 is in existence and continues to be in force and also originally, one Ramasamy Poojari and thereafter, his descendants are Hereditary Trustees and as per the scheme and the Board's Order, they are entitled to their respective shares. It is not disputed by the petitioners that they were in receipt of their share upto 15.11.1997 without any demur. It is also not in dispute that the petitioners filed O.S. No.31 of 2000 claiming 2/30 share from and out of the income of the temple in which the share of the petitioners was not declared and in fact, the petitioners were directed to approach the first respondent to redress their grievance subsequent to which the first respondent was directed to fix the share of income payable to the petitioners and also the specific heads of income of the temple from and out of which the share has to be given. It was also held in the said suit that the first respondent, on such application being filed by the petitioners, shall dispose of the same, either with O.A. No.4 of 2000 or independent of it, within a period of three months from the date of filing and he shall also give reasonable opportunity to the petitioners and hear their submissions judiciously and impartially. The Trial Court further made it clear that, in the application of the petitioners, the first respondent shall not dispute the point that the petitioners are Hereditary Poojaris of the temple. The application of the petitioners is still under the consideration of the first respondent. Even pending that application, the petitioners have preferred an appeal in A.S. No.66 of 2004 and that appeal is also pending.

25. Now, the issue involved in this writ petition is the implementation of the scheme decree dated 04.05.1935 in respect of share of the petitioners from and out of the income of the temple. Taking cognizance the facts and circumstances of the case, I am of

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the considered view that the question as to whether the petitioners, as descendants, are entitled to get only their father's share or even their father's brother share, cannot be decided by way of a writ petition and in this context, it is quite relevant to refer to Section 63(e) of the Act which reads as under:

> 63. Joint Commissioner or Deputy Commissioner to decide certain disputes and matters: - Subject to the rights of suit or appeal hereinafter provided, the Joint Commissioner or the Deputy Commissioner, as the case may be, shall have power to inquire into and decide the following disputes and matters:
>
> (e) whether any person is entitled, by custom or otherwise, to any honour, emolument or perquisite in any religious institution; and what the established usage of a religious institution is in regard to any other matter:

26. From the above provision of the Act, it is clear that the entitlement of any person from any religious institution has to be decided by the Joint Commissioner or Deputy Commissioner of the H.R. & C.E. Department, as the case may be. As per clause (ii) of Section 70(1) of the Act, any party aggrieved by an order passed by the Commissioner, may, within ninety days from the date of receipt of such order by him, institute a suit in the Court against such order. As per Section 70(2) of the Act, any party, aggrieved by a decree of the Court under sub section (1), may, within ninety days from the date of the decree, appeal to the High Court.

27. In the instant case, what has happened is, the petitioners have straightaway filed a suit for declaration that they are entitled to 2/26 share and the said suit was disposed of with one of the directions being the petitioners have to prefer an application before the first respondent, the Joint Commissioner. Accordingly, they have made an application before the first respondent and pending that application, the petitioners have also filed an Appeal Suit in respect of their claim and that Appeal Suit also is pending. From this series of litigations, it is apparently clear that the petitioners have approached this Court with the present writ petition without completely exhausting the remedy which is open to them before approaching this Court. Needless to say, as per Section 63(e) of the Act, the Joint Commissioner is the competent authority before whom the application is pending and he is the appropriate person to decide the issue on hand. That being the case, the petitioners, without any valid cause, ought not to have rushed to this Court and filed the present writ petition claiming their share which is contrary to the provision of the Act cited. Even at the first instance of their arguments, the counsel

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for the respondents have raised a preliminary objection to the effect that this writ petition is not maintainable in view of Section 63(e) of the Act.

28. In view of the above, as the entire issue in dispute is a matter concerned with the competent authority, i.e. the Joint Commissioner of H.R. & C.E. Board who is the first respondent, under whose wisdom and purview it vests with, I am of the view that the petitioners do not have the locus standi to invoke Article 226 of the Constitution of India to file this writ petition, without fully exhausting the alternative remedy available to them under the Act. In that view of the matter, I have no hesitation in holding that the writ petition is premature and not maintainable and as such, the petitioners' claim seeking the relief of mandamus cannot be granted.

29. However, as O.A. No.4 of 2000 before the Joint Commissioner, H.R. & C.E. Board, the first respondent herein is pending for quite a long period, even though there is no legal impediment in disposing of the same and since if that application is decided, the petitioners may have a finality over their claim, the first respondent is directed to decide the said O.A. filed by the petitioners and pass appropriate orders within a period of two months from the date of receipt of a copy of this order.

In fine, the writ petition stands dismissed with the above direction. There is no order as to costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

cad

To

1. The Joint Commissioner
   Hindu Religious & Charitable Endowment Board
   Sivagangai

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2. The Assistant Commissioner/Executive Officer
Mariamman Temple
Irukkankudi Village
Sattur Taluk
Virudunagar District

1 cc to M/s. S. Subbiah, Advocate, Sr. 9761
1 cc to M/s. S.D. Ramalingam, Advocate, sr. 9744
1 cc to Spl. Government Pleader, HR & Ce, Sr. 9742

W.P. No.17952 of 2004

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